

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

MFA.No. 19 of 2007(B)

O.P.NO.746/2004 & OP.888/2004 of FAMILY COURT,ERNAKULAM
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APPELLANT/PETITIONER:

ANNIE, D/O. VARGHESE,
ARYA VILAS, NELLIKKAL, CHENGANUR,
ALAPUZHA DISTRICT. PRESENTLY RESIDING AT 4-D,
NEELIMA CLASSICS, KANJIKUZHI, (PO) MUTTAMBALAM,
KOTTAYAM DISTRICT.

BY ADV. SRI.M.K.DILEEP KUMAR

RESPONDENT/RESPONDENT:

V.J.A. RICHARD, S/O. JACOB,
GRACE 16/1934, KOCHUPALLY ROAD,
THOPPUMPADY, KOCHI, ERNAKULAM DISTRICT.

BY ADV. SRI.SUBAL J.PAUL
SMT.SHEEBA SUBAL

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 19/06/2007, ALONG WITH MAT.APPEAL.NO.210/2007,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.19 OF 2007 ()

&

M.A.T.APPEAL.NO.210 OF 2007

Dated this the 19th day of June, 2007

J U D G M E N T

KOSHY,J.

These two appeals are filed by the father and mother of a girl child called Rianne. Mother of the child filed a petition before the Family Court for custody of the child. Father and mother are living separately from 3.7.2004 onwards. Mother is employed in Indian Railway. Child was born on 16.10.1998. According to her, her husband is an alcoholic addict and he treated them with cruelty. She also filed O.P.No.746/2004 for seeking divorce on the ground of cruelty. That petition was dismissed. It is submitted that she filed an appeal and that is pending. Family Court held that for guardianship of the child the most important aspect is the welfare of the child. The Tribunal also noticed that the mother of the child is well

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employed in Indian Railways and she is graduate with Post graduate Diploma in Computer Application and she passed several tests and got promotion in Indian Railway. Whereas her husband passed only S.S.L.C. But he was an Ex-merchant Navy man and he passed many navigation courses. But unfortunately now he is having no job. It is stated that he is conducting business now. At the time when the case was going on in the Family Court she was residing at Chennai. It is her case that the child will get admission in a School at Chennai. After going through the various submissions, the Family Court came to the right conclusion that guardianship will be with the mother and it is the best interest of the child. At the same time Family Court held that she is already studying in Kendriya Vidyalaya, Girinagar and till she complete the age of 12, that is, upto 2011, custody will be with the father but during vacations etc. mother can take custody of the child. Because of the contention that mother is not living in a religious atmosphere court also directed that during vacations, she should also be

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sent for Catechism classes. So as per the present order, the child should be in the custody of the father so that she can complete her studies in Kendriya Vidyalaya upto 2011 and thereafter child should be given to the mother.

2. Mother filed M.F.A.(G & W).No.19/2007 contending that custody given upto 2011 to the husband was not correct. She should be granted the custody. Questioning the order of the Family Court in so far it is against the husband and giving permanent custody of the child to the mother after 2011, husband filed M.A.T.210/2007. On going through the order, we are of the opinion that major fact that is considered by the Family Court was that she was studying in Kendriya Vidyalaya, Girinagar and changing of the School will affect her educational career even though mother can be appointed as guardian. We have advised the parties to live together. If mother and father have interest on the welfare of the child, they should live together. However, efforts made by the Family Court as well as

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the Bench which earlier heard this matter became fruitless. Now it is submitted that mother of the child got a transfer to Kottayam and now she is living at Kottayam in Railway quarters. We have ascertained whether she will get admission in Kendriya Vidyalaya, Kottayam. The letter dated 16.6.2007 issued by the Principal, Kendriya Vidyalaya Rubber Board, Kottayam, was produced to show that on getting T.C. from K.V.S.Dronacharya they will give admission to the child. We are considering the facts and circumstances and also considering the fact that this is a girl child now about 7 years and attention of the mother is necessary. We are of the view that child should be with the mother and the child can be in the custody of the father on all vacations and on second Saturday and second Sunday of every month. He can take her to his residence on second Friday after the School working time is over and return her in the morning of Monday to the School or to the residence of mother and he will be free to visit the child in the School on permission by the School authorities. We also

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make it clear that we are most concerned with the welfare of the child. If there is any substantial change in the circumstances, parties can move the Family Court for appropriate orders and observations in the order will not be a res judicata. Paramount importance is on the welfare of the child. Direction of the Family Court in the last paragraph of the order is confirmed and both parties should comply with the same. With regard to the appointment of guardian, if parties have got any serious complaints while working out the present arrangement, it is for them to approach the Family Court and Family Court is free to deal with the situation in the best interest of the child. Both appeals are disposed of accordingly.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

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J.B.KOSHY & K.P.BALACHANDRAN, JJ.

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8th June, 2007